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## Touro Law Review

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Volume 10 | Number 3


Article 55

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1994

### Local Finances: 1963 Elmwood Avenue Inc. v. Tanzella

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#### Recommended Citation

(1994) "Local Finances: 1963 Elmwood Avenue Inc. v. Tanzella," *Touro Law Review*. Vol. 10 : No. 3 , Article 55.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol10/iss3/55>

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Furthermore, the court found that the \$350,000 appropriation from the State Legislature was in fact a “gift of state aid to Washington and Warren Counties.”<sup>1620</sup>

In conclusion, the IDA’s financing agreement, including the bonds, as well as the appropriation of money by the States to help pay the counties’ waste disposal fees were held to be constitutional by the court.

#### ***FOURTH DEPARTMENT***

1963 Elmwood Avenue, Inc. v. Tanzella<sup>1621</sup>  
(decided May 28, 1993)

Petitioner, 1963 Elmwood Avenue, Inc., sought to abate property taxes which had been assessed for the 1989-90 year.<sup>1622</sup> The petitioner claimed that the City had failed to comply with the City of Buffalo’s Resolution 118.<sup>1623</sup> The court held that this resolution violated the New York State Constitution<sup>1624</sup> because

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providing for a city to appropriate a gift of public funds to public corporation, while incurring no liability); Congdon v. Washington Co., 130 A.D.2d 27, 518 N.Y.S.2d 224 (3d Dep’t 1987) (holding that since certain contingencies terminate a counties’ obligation to pay Industrial Development Agency for solid waste disposal and since the county had no liability to the bondholders then the waste disposal agreement was not unlawful), *appeal denied*, 70 N.Y.2d 610, 516 N.E.2d 1223, 522 N.Y.S.2d 110 (1987)).

1620. *Schulz*, \_\_\_ A.D.2d at \_\_\_, 603 N.Y.S.2d at 209 (citing *Comereski v. City of Elmira*, 308 N.Y. 248, 125 N.E.2d 241 (1955) (holding that a city’s gift of public funds for proper public purposes to another public corporation is proper)).

1621. 193 A.D.2d 1110, 598 N.Y.S.2d 414 (4th Dep’t 1993).

1622. *Id.* at 1110, 598 N.Y.S.2d at 415.

1623. *Id.* Resolution 118 directed the “City of Buffalo Common Council” to absolve the petitioner, a private corporation of its “tax liability for that year,” upon a finding that the property owners “conferred a genuine public benefit upon the City of Buffalo by . . . removing dilapidated buildings and clearing the site . . . at no cost to the city of Buffalo.” *Id.*

1624. N.Y. CONST. art. VIII, § 1. This provision provides in pertinent part: “No . . . city . . . shall give or loan any money to or in the aid of any individual, or private corporation . . . .” *Id.*

the city had no legal or equitable obligation to forgive petitioner's taxes when it cleared its property for its own purposes.<sup>1625</sup>

The petitioner, 1963 Elmwood Avenue, Inc., a private corporation, cleared and subsequently acquired a rundown piece of property located in Buffalo, New York.<sup>1626</sup> Pursuant to Resolution 118, the City of Buffalo Common Council absolved petitioner of its property taxes for the 1989-1990 tax year,<sup>1627</sup> the period prior to petitioner's acquisition of the property.<sup>1628</sup>

The Commissioner of Assessment for Buffalo refused to grant petitioner's property tax abatement because his counsel "advised him he was not empowered to do so."<sup>1629</sup> Subsequently, the petitioner filed suit for the city's failure to perform its statutory duty under the resolution.<sup>1630</sup> The trial court denied the city's motion to dismiss the petition, and the city appealed.<sup>1631</sup>

The appellate division held that the trial court erred in denying the city's motion because Resolution 118 violated the State Constitution.<sup>1632</sup> The court stated that under article VIII, section 1, "a municipality must have either a legal or an equitable obligation to pay public funds."<sup>1633</sup> The court found that not only did the city not have a legal obligation to abate petitioner's property taxes, but it also did not have an equitable obligation to do so.<sup>1634</sup>

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1625. 193 A.D.2d at 1111, 598 N.Y.S.2d at 415.

1626. *Id.* at 1110, 598 N.Y.S.2d at 415.

1627. *Id.*

1628. *Id.*

1629. *Id.*

1630. *Id.*

1631. *Id.* at 1110, 598 N.Y.S.2d at 415.

1632. *Id.* at 1010-11, 598 N.Y.S.2d at 415.

1633. 193 A.D.2d at 1111, 598 N.Y.S.2d at 415; *see also* Antonopoulou v. Beame, 32 N.Y.2d 126, 133, 296 N.E.2d 247, 251, 343 N.Y.S.2d 346, 352 (1973) (holding that payment of public monies was a legal obligation of the city because it was a contractual right and not a gift and thereby did not violate the State Constitution); *City of Rochester v. Chiarella*, 98 A.D.2d 8, 12, 470 N.Y.S.2d 181, 184 (4th Dep't 1983) (holding that city's ordinance that required its equitable and moral obligations to repay non-protesting taxpayers was constitutional), *aff'd*, 63 N.Y.2d 857, 472 N.E.2d 46, 482 N.Y.S.2d 270 (1984).

1634. 1963 *Elmwood*, 193 A.D.2d at 1111, 598 N.Y.S.2d at 415.

In reaching its conclusion, the court relied on two cases. In *Antonopoulou v. Beame*,<sup>1635</sup> the court held that retroactive compensation for reinstatement of a teacher's job was not a gift, but a constitutional legal obligation of the city which it had to pay.<sup>1636</sup> The *Antonopoulou* court reasoned that because a grievance award created an enforceable contractual right, it was as binding as a contract itself and thus not a gift.<sup>1637</sup> Therefore, the city had a legal obligation to comply with the decision and pay the petitioner, and this was constitutional.<sup>1638</sup>

Furthermore, in *City of Rochester v. Chiarella*,<sup>1639</sup> the court held that the city's ordinance, recognizing its moral and equitable obligation to repay non-protesting taxpayers, was constitutional. The *Chiarella* court reasoned that "when the only impediment to legal liability [of the city] lies in a technical defect which bars an otherwise valid claim, a recognizable moral and equitable obligation arises on which the city may act."<sup>1640</sup> Thus, the ordinance was properly exercised by the Buffalo legislature, and its payment to non-protesting taxpayers was not a gift and thus constitutional.<sup>1641</sup>

In 1963 *Elmwood*, the court reasoned that there was "no contention . . . the [c]ity owed a legal obligation to petitioner."<sup>1642</sup> Moreover, the city had no equitable obligation to forgive petitioner's taxes because petitioner, as owner of the property, "had a duty to maintain the property in a safe and sanitary condition."<sup>1643</sup> The court reasoned that "[a]ny incidental benefit to the City arising from petitioner's unilateral act in clearing the property for its own purposes does not create an equitable duty on the part of the City to forgive taxes

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1635. 32 N.Y.2d 126, 296 N.E.2d 247, 343 N.Y.S.2d 346 (1973).

1636. *Id.* at 133, 296 N.E.2d at 251, 343 N.Y.S.2d at 352.

1637. *Id.*

1638. *Id.*

1639. 98 A.D.2d 8, 470 N.Y.S.2d 181 (4th Dep't 1983), *aff'd*, 63 N.Y.2d 857, 472 N.E.2d 46, 482 N.Y.S.2d 270 (1984).

1640. *Id.* at 11, 470 N.Y.S.2d at 183-84.

1641. *Id.* at 12, 470 N.Y.S.2d at 184.

1642. 193 A.D.2d at 1111, 598 N.Y.S.2d at 415.

1643. *Id.*

retroactively.”<sup>1644</sup> Thus, the City of Buffalo’s resolution 118 was held to be unconstitutional.<sup>1645</sup>

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1644. *Id.*; See also *Ausable Chasm Co. v. State*, 266 N.Y. 326, 331-32, 194 N.E. 843, 845, 266 N.Y. 326, 331-32 (1935) (“In no case heretofore has the state granted compensation for benefit enjoyed, though at the expense of another, where the benefit has been given voluntarily, without request from the [s]tate . . . . [I]t appears that they [the claimants] acted for some purpose of their own.”).

1645. 193 A.D.2d at 1111, 598 N.Y.S.2d at 415.